

(1997) 08 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 12988 of 1997

Jeyesh

APPELLANT

Vs

Central Administrative Tribunal and Others

RESPONDENT

Date of Decision : 29-08-1997

Acts Referred:

Constitution of India, 1950 — Article 116, 14

Citation : (1997) 08 KL CK 0003

Hon'ble Judges : K.G. Balakrishnan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : M.R. Rajendran Nair and R. Sreeraj, for the Appellant; C.A. Majeed, A.C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.N. Patnaik, J.—The Petitioner in O.A. 453 of 1997 on the file of the Central Administrative Tribunal, Ernakulam Bench has challenged the order dated 18th July 1997 by which the prayer to quash the selection held on 26th March 1997 to fill up the post of Extra Departmental Delivery Agent (E.D.D.A.), Mynagappally Branch office was dismissed.

2. For a single post of E.D.D.A. in Mynagappally Branch Post Office, the Subdivisional Inspector of the Department of Posts, Mynagappally conducted a selection on 26th March 1997. He notified the vacancy to the local Employment Exchange and considered the candidates sponsored by the Employment Exchange. The third Respondent herein was also considered on the basis of a direction of the Tribunal in O.A. 416 of 1997 though he was not sponsored by the Employment Exchange. The vacancy was not published in any newspaper or electronic media. The third Respondent was selected for the post. The Petitioner contended that he came to know of the selection only on 26th March 1997. He is eligible to be considered for appointment to the post. He was not sponsored by the Employment Exchange. But he requested to cancel the selection on the ground that it was made contrary to the law laid down by the Supreme Court. He

also made a prayer to conduct a fresh selection in accordance with law. That was rejected by the postal authorities as well as by the Tribunal.

The first and second Respondents in O.A. 453/97 who are the Subdivisional Inspector and Senior Superintendent of Posts respectively contended that the selection was made in accordance with the instructions given by the Director General, Posts and Telegraphs in regard to the method of recruitment to the post. It has been specifically mentioned in the instructions that the recruitment is to be made through the Employment Exchange and public notification is prescribed only in cases where sufficient number of candidates are not sponsored by the Employment Exchange. The third Respondent who applied for the post directly was also considered along with the candidates sponsored by the Employment Exchange. The Petitioner applied for the post on 2nd April 1997 by which date the selection had been finalised. Since no instruction has been received from the Director General, Posts and Telegraphs to issue an open notification before making the selection, the Respondents did not commit any illegality. The third Respondent had also filed a reply statement, to the same effect.

3. The Tribunal by relying on the dictum laid down by the Supreme Court in Union of India (UOI) and Others Vs. N. Hargopal and Others, held that there was no violation of Articles 14 and 16 of the Constitution of India and therefore there was no illegality in making the selection.

Learned Counsel for the Petitioner relied on the decisions in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, and in Raj Kumar v. Sakthi Raj 1997 (2) S.L.R. 130 and contended that in the absence of publication in any of the widely circulated dailies or in any of the electronic media, the selection is vitiated.

4. The only point for consideration is whether the recruitment process resorted to by the second Respondent herein is vitiated by any illegality. The Letter No. 45-22/71-SPB. 1/Pen, dated 4th September 1982 of the D.G. P. and T. lays down that the Government have decided that the appointment of E.D.D.A. should be made through Employment Exchange. In case no nominations are received from the Employment Exchange regarding the candidates as per requirements or if any of the candidates sponsored by the Employment Exchange is not found suitable as per prescribed conditions of eligibility, it would be open to the competent authority to make selection from other applicants in accordance with the existing procedure. One of the eligibility criteria for the applicant is that he must be a permanent resident of the village where the post office is located or proposed to be located. Admittedly, there was only one post of E.D.D.A. That post had to be filled up only from among the applicants who have got permanent residence in the village and not anybody else of any other place. In this background it is to be seen whether any such wide publicity through newspapers and electronic media was essential.

5. In *Union of India (UOI) and Others Vs. N. Hargopal and Others*, one of the questions that arose for consideration was whether the choice of selection should be restricted only to candidates sponsored by the Employment Exchange, and if such a method offended Articles 14 and 16 of the Constitution. In that case the selection of candidates was made only among those who were sponsored by the Employment Exchange. In that context, it is laid down as follows:

The object of recruitment to any service or post is to secure the most suitable person who answers the demands of the requirements of the job. In the case of public employment, it is necessary to eliminate arbitrariness and favouritism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointment as he likes, a grave element of arbitrariness is certainly introduced. This must necessarily be avoided if Articles 14 and 16 have to be given any meaning. We, therefore, consider that insistence of recruitment through Employment Exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. The submission that Employment Exchanges do not reach everywhere applies equally to whatever method of advertising vacancies is adopted. Advertisement in the daily press, for example, is also equally ineffective as it does not reach everyone desiring employment. In the absence of a better method of recruitment, we think that any restriction that employment in Government Departments should be through the medium of Employment Exchanges does not offend Articles 14 and 16 of the Constitution.

6. In *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, the Supreme Court referred to the aforesaid decision in *Union of India (UOI) and Others Vs. N. Hargopal and Others*, . But held as follows:

Having regard to the respective contentions, we are of the view that contention of the Respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the Employment Exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the Employment Exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the Employment Exchange, and Employment Exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also

display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

The law laid down in *Union of India (UOI) and Others Vs. N. Hargopal and Others*, was not expressly overruled. In *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, it was contended that the restriction of the field of choice to the selected candidates sponsored through the Employment Exchange denies the rights of other eligible people to be considered for appointment to posts under the State and many people cannot reach the Employment Exchange to get their needs sponsored and the Employment Exchanges have not adopted fair rules and procedures to send their names according to the seniority in their record. It was also suggested by the Respondents that the better course would be to adopt both the mediums namely the Employment Exchange and publication in the newspaper and that would subserve the public purpose. The Supreme Court accepted this suggestion and laid down the aforesaid dictum. This was affirmed in *Rajkumar's case 1997 (2) S.L.R. 130* by the Supreme Court and it neither referred nor overruled the dictum laid down in *Union of India (UOI) and Others Vs. N. Hargopal and Others*, . In *Excise Superintendent's case*, no observation was made as to the illegality of the dictum laid down in *Union of India (UOI) and Others Vs. N. Hargopal and Others*, . In that case selection was to be made for 723 posts in the Excise Department. In *Rajkumar's case 1997 (2) S.L.R. 130*, various irregularities vitiating the selection process were noticed. The selection committee selected the candidates in violation of the rules. In that case also a considerable number of candidates had to be selected for a number of posts.

7. Since in neither of these two decisions, the dictum laid down in *Union of India (UOI) and Others Vs. N. Hargopal and Others*, was expressly overruled, the instruction given by the D.G.P. and T. to select persons from among those who are sponsored by the Employment Exchange does not offend Articles 14 and 16 of the Constitution. Moreover, since the choice of a candidate is limited to the residents of a particular village, the requirement of wide publicity through newspapers and electronic media was not essential. In fact the Petitioner even without any such publication would know of the vacancy of the post of E.D.D.A. In a village where people live in a very compact area, it cannot be said that the eligible candidates of the village were not aware of the vacancy. We find that in both the aforesaid Supreme Court decisions on which reliance is placed by the learned Counsel for the Petitioner, a large number of appointments were required to be made from among candidates living far and wide in that State. In such circumstances wide publicity through newspapers and electronic media was absolutely necessary. In the peculiar circumstances of this case, absence of publicity in the newspaper or electronic media could not make the recruitment illegal. Moreover no candidate sponsored by the Employment Exchange in fact

was selected. On the other hand, the third Respondent who made an application directly was selected. From the counter-affidavit filed by the second Respondent, it appears that the Petitioner sent his application more than a week after the date of interview and selection. Hence it was rightly rejected.

8. For the reasons stated above, we do not find any legal infirmity in the finding of the Tribunal. There is, therefore, no merit in this writ petition. The O.P. is dismissed. No costs.